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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th August, 2024

No. 13/2/146-HII(2)-2024/13435.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **102/2021** dated **05.06.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ASHOK KUMAR RANA, AGED 50 YEARS, S/O SH. JAFFAR SINGH, R/O HOUSE NO.1259, CHAMAN COLONY, DHANAS, U.T. CHANDIGARH. (Workman)

AND

1. AMBUJA CEMENT LIMITED, 5TH FLOOR, ELEGANT BUSINESS PARK, MIDC, CROSS ROAD-B, OFF, ADHERI KURLA ROAD, BEHIND KOHINOOR INTERCONTINENTAL HOTEL, JB NAGAR - ADHERI (EAST), MUMBAI THROUGH ITS MANAGING DIRECTOR.
2. THE MANAGER, INDIA PROCUREMENT ORGANISATION - NORTH CLUSTER, AMBUJA CEMENT LIMITED, SCO NO.42-43, SECTOR 9-D, MADHYA MARG, CHANDIGARH.

NOW SCO NO. 81, 2ND FLOOR, SECTOR 5, PANCHKULA, HARYANA - 134109. (Management)

AWARD

1. Ashok Kumar Rana, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).
2. Briefly stated the averments of claim statement are that workman was verbally engaged and joined on 01.07.1995 at Chandigarh as a casual worker for the collection of material from different transporters / shops and loading into vehicle as the management is functioning at Chandigarh for Chandigarh, Punjab and Himachal Pradesh. Management No.2 after the year 2012 shifted some office work from Chandigarh to (1999)

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SCO 81, Sector 5, Panchkula but the workman still remained pending at Chandigarh as the management is still functioning at Chandigarh. The workman had got his PF No.PBCHDD00386810000000013/PBCHDDD 38681000 in Chandigarh and was getting his monthly wages at Chandigarh. During the lock down of India due to COVID-19, the management verbally terminated the services of the workman on 31.12.2020 (A.N.) without any show-cause notice, charge sheet, inquiry, without notice pay and without any retrenchment compensation. The workman has put his continuous regular service of more than 25 years preceding the date of illegal termination and has put 240 days in one calendar year from the aforesaid date of retrenchment with the management. At the time of retrenchment, the workman was drawing his wages ₹ 18,000/-. After the illegal termination of the services of the workman, the management has appointed and joined new hands for Chandigarh Circle to collect the materials from management No.2. The juniors of the workman are still in service with the management. The management has not complied with provisions of Section 25F of the ID Act and is running unfair labour practice. The work & conduct of the workman during the course of his employment remained very satisfactory and always appreciated by the management and no show-cause notice, no inquiry or charge sheet was ever issued or initiated during his employment and after illegal termination of services. The workman is un-employed since then and has no source of livelihood. After the illegal termination of services, the workman issued demand notice dated 17.03.2021 seeking reinstatement with continuity of service and full back wages but the management did not accede to the request of workman. In pursuance to the demand notice dated 17.03.2021, the conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh stand failed on 18.08.2021. Prayer is made that the workman may be reinstated with full back wages along with continuity of service.

3. On notice, management No.1 & 2 contested the statement of claim by filing joint written statement on 22.07.2022 wherein preliminary submissions are made to the effect that the complaint (*here-in-after 'claim statement'*) is liable to be dismissed as the same is ambiguous, misleading and is an attempt to arm-twist the management of the respondent-company to reap un-due gains from the company, whereas the workman has no claim qua the respondent-company as he was never on the pay rolls of the company. Hence, the present claim must be dismissed on this fact alone. It is further submitted that claim statement is frivolous as the claimant-workman was not an employee of respondent-company and therefore, was terminated from his services by the employer-contractor who is not made a party by him in the present claim and also no document is produced by him to prove that he was ever been an employee of the respondent-company. The claim of the workman lies against the company, who hired him, against whom he may have made a protest or register any complaint oral or in writing or raised his demands for wages or reinstatement. Rather the workman had accepted and acted upon his termination made in December 2020 as is evident from his claim petition (*here-in-after 'claim statement'*), regarding which no documentary evidence is adduced by him. The workman has filed the present claim statement as an after-thought and being ill-advised for the claim itself is ill-founded and without any locus standi qua the respondent-company. The claim statement may be dismissed in limine as the workman has failed to make out a fit case of illegal termination, retrenchment of services against the management of the company. When he has produced no records, adduce no evidence and afforded no written document, with the claim statement for making out a case against the management of the company. As the workman was never on the pay rolls of the respondent-company, the entire claim statement is an afterthought and uncorroborated without any evidence and no document to establish any default committed by the company rather the same is mis-conceived and frivolous for non-joinder of parties. Workman has not approached this Tribunal with clean hands and has kept concealed the parties who have hired him to perform his duties and has instead made the respondent-company as a party, which could not be made the party and instead his employer / hiring Manager / company should have been made a party where the claim could be maintainable, if any, as per law. The workman is well aware that respondent-management company is a company of high reputation in the market and is engaged in manufacturing and distributing of world class cement products. The workman has filed the instant claim statement in an attempt to extract undue gains from the company, knowing its market reputation. The claim statement must be dismissed on the very fact that the claimant has failed to produce any evidence, bring on record any facts to establish that the retrenchment was never made by the respondent-company and hence, was illegal and /or without issuing of show cause notice is not maintainable qua the respondent-company. The claim requires to be dismissed on this very fact alone.

4. Further in para-wise reply it is stated that the workman has been engaged without any formal written contract and only by word of mouth, as per the relevant market practice of engaging workmen. Hence, it is difficult to ascertain the very nature of work of the workman, who was involved into with the company i.e. Ambuja Cement Ltd. From the facts of the present case, the respondent-company submits that the workman was never employed nor hired nor was on the pay rolls of the respondent-company. It is denied for want of knowledge that the management No.2 after 20.01.2023 shifted some work to Chandigarh. The facts averred in para 2 of the claim statement are based on the workman's personal knowledge and no evidence of the same is available whatsoever. Hence, it is in thin air to make such claims regarding the shifting / functioning at Chandigarh. It is a matter of record that the workman had got issued his PF in Chandigarh and that the workman was getting his monthly wages at Chandigarh. It is denied as wrong that during the lock down of India due to COVID-19, the management orally terminated the services of the workman on 31.12.2020 (A.M.) without any show cause notice / charge sheet / without any notice pay and without any retrenchment compensation. It is reiterated that the workman never worked for the management-company and was not on its pay roll. Hence, the question of illegal termination as alleged qua the management-company never arises. The workman must be put to strict proof regarding the same. It is denied that the workman has put his continuous regular service of more than 25 years preceding the date of illegal termination, as alleged and has put 240 days in one calendar year from the aforesaid date of retrenchment with the management as alleged. None of the above mentioned facts are true and are out-rightly denied by the management. The present case has been projected and is mis-conceived as that of illegal termination as alleged. Rather the present case is no case at all and all the allegations are baseless and uncorroborated without any cogent proof whatsoever. It is denied for want of knowledge that at the time of retrenchment the workman was drawing his wages @ ₹ 11,800/- per month. It is denied for want of knowledge that junior of the workman are still in service with the management. It is further submitted that company is in compliance with Section 25F of the ID Act, however, the workman has no locus standi to file the said claim statement qua the company as he was never been on the pay roll of the company. It is a matter of record that the workman is unemployed since then has no source of livelihood. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed in limine with exemplary cost or that claims under the instant claim application seeking reinstatement of the workman and full back wages as being false and misleading and or pass any other petition as this Court deems fit.

5. Replication not filed. From the averments of the parties, following issues were framed vide order dated 27.10.2022 :-

1. Whether the termination of the service of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, with full back wages and all consequential benefits, as prayed for ? OPW
3. Whether the workman has not approached the court with clean hands ? OPM
4. Whether the present reference is not maintainable? OPM
5. Relief.

6. In evidence, workman Ashok Kumar Rana himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/12' and Mark 'A' to Mark 'C'.

Exhibit 'AW1/1' is appreciation letter dated 05.02.2011.

Exhibit 'AW1/2' is delivery order dated 04.05.2007 issued to the workman by Ambuja Cements Ltd.

Exhibit 'AW1/3' is invoice forwarding memo dated 06.04.2009.

Exhibit 'AW1/4' is consignment note dated 22.02.2010 by Ambuja Cements Limited.

Exhibit 'AW1/5' is authorisation in favour of workman issued by Ambuja Cements Ltd.

Exhibit 'AW1/6' is supply of lubricant of different grades dated 01.08.2012.

Exhibit 'AW1/7' is authority letter in favour of the workman issued by Senior Manager, Ambuja Cements Limited dated 05.04.2018.

Exhibit 'AW1/8' is certificate dated 26.11.2018 issued by Ambuja Cements Limited relating to sending of office record from June, 2015 to November, 2018.

Exhibit 'AW1/9' is demand notice dated 17.03.2021 under Section 2A of the Industrial Disputes Act, 1947.

Exhibit 'AW1/10' & Exhibit 'AW1/11' is postal receipts dated 18.03.2021.

Exhibit 'AW1/12' is failure report dated 16.09.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

Mark 'A' is copy of delivery order dated 14.02.2001.

Mark 'B' is letter dated 09.05.2002 regarding handing over dark green colour.

Mark 'C' is authority letter dated 10.07.2015 regarding to collect the consignment dispatched by Atlas Copco Limited.

7. On 14.03.2023 the workman closed his evidence.

8. On the other hand, management examined MW1 Saligram Pathak - Authorised Representative of Ambuja Cement Ltd., who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' & Exhibit 'M2'.

Exhibit 'M1' is agreement dated 24.12.2019 executed between the Ambuja Cement & Grassroot Services.

Exhibit 'M2' is letter dated 11.06.2023 addressed from the workman to the Service Provider i.e. Grassroot Services.

9. On 18.09.2023 in his remaining examination-in-chief of MW1 deposed that he is not in possession of legible copy of documents referred as Exhibit 'M3' in his affidavit Exhibit 'MW1/A', therefore, Exhibit 'M3' may be omitted from his affidavit.

10. On 29.04.2024 Learned Representative for management No.1 & 2 closed oral evidence. On 31.05.2024 Learned Representative for management No.1 & 2 tendered into evidence copy of letter / notice dated 25.09.2020 addressed from Grassroot Services to Ashok Rana vide Exhibit 'M4'. On 05.06.2024 Learned Representative for the management closed documentary evidence of management.

11. I have heard the arguments of Learned Representative for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 to 3 :

12. All these issues are taken up together being interconnected and in order to avoid repetition of discussion.

13. Onus to prove issues No.1 & 2 on the workman and onus to prove issue No.3 is on the management.

14. Under these issues, the workman Ashok Kumar Rana examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1/1' to Exhibit 'AW1/12' and Mark 'A' to Mark 'C'.

15. On the other hand, managements No.1 & 2 examined MW1 Saligram Pathak - Authorised Representative, Ambuja Cement Limited, who deposed that he is working with the Ambuja Cement Ltd. as Logistic Coordinator and is well versed with the facts of the present case and hence, competent to file the such affidavit. MW1 in his affidavit further deposed all the material contents of the written statement, which are not reproduced here to avoid repetition. It is pertinent to mention here that during cross-examination of MW1 Learned Representative for the workman had put certificate of registration dated 15.12.1994 issued by ALC (Centre), Chandigarh vide Exhibit 'M3'. To support the oral testimony of MW1 Learned Representative for the management referred documents Exhibit 'M1' to Exhibit 'M4'.

16. From the oral as well as documentary evidence led by the parties, it comes out that workman has alleged that he is employee of the managements No.1 & 2. Learned Representative for the workman argued that the workman was verbally engaged as casual worker by the management on 01.07.1995 at Chandigarh. The job of the workman was to collect material from different transporters / shops and loading into vehicle. It is further argued by Learned Representative for the workman that the letter dated 05.02.2011 on the letter pad of Ambuja Cement addressed from S. R. Pathak - Procurement Department, Chandigarh to General Manager Procurement, Durlaghat would show that the workman was working in procurement department, Chandigarh since 1995 and he was getting salary ₹ 6,500/- per month. Learned Representative for the workman by referring to letters Exhibit 'AW1/2' (issued from Manager Purchase), Exhibit 'AW1/4' (issued from Assistant Manager Procurement), Exhibit 'AW1/6' (issued from Senior Manager Procurement) and Exhibit 'AW1/7' (issued from Senior Manager India Procurement Organisation, North Cluster Ambuja Cement Ltd., Panchkula) on the letter pad of the Ambuja Cement argued that the competent authorities of Ambuja Cement had issued delivery orders to the workman, authorising him to lift the material against the above said mentioned delivery order. Learned Representative for the workman also referred the cheque forwarding memo Exhibit 'AW1/3' to show that the workman was deputed in the purchase office of Ambuja Cement Ltd. at Chandigarh. Learned Representative for the workman referred the documents Exhibit 'AW1/8' and Mark 'A' to Mark 'C' and argued that the workman was authorised by the Ambuja Cement Ltd. to collect the consignment dispatched against the concerned delivery order. Much stress is laid upon the fact that all the above documents reflects that the workman was employee of Ambuja Cement Limited ie. Managements No.1 & 2. Learned Representative for the workman argued that the workman remained in continuous employment of the management No. 1 & 2 from 01.07.1995 to 31.12.2020. The services of the workman were verbally terminated on 31.12.2020 without issuing any show cause notice, charge sheet, without holding any inquiry, without issuing prior notice or notice pay in lieu of the notice period and without payment of any retrenchment compensation by the management No.1 & 2. The workman has completed continuous service of 240 days in twelve calendar months preceding termination. The workman is covered under Section 25B of the ID Act. Therefore, the termination of services of the workman without compliance of the conditions imposed in Section 25F of the ID Act is illegal.

17. On the other hand, Learned Representative for the management argued that there is no relationship of employer & employee between the management No.1 & 2 and the workman as the workman was never on the pay rolls of the management No.1 & 2. In fact the workman was deployed with the management No.1 & 2 through different contractors and lastly through contractor under the name & style of Grassroot Services. The services of the workman were under the control & supervision of the contractor. The workman has not impleaded the contractor, who was a necessary party. The termination of services of the workman has no concern with the management No.1 & 2. Therefore, the provisions of Section 25F are not attracted against the management No.1 & 2 for want of relationship of employer & employee.

18. From the arguments advanced by Learned Representatives for the parties, it comes out that the management No.1 & 2 has disputed its relationship as employer with the workman. The plea taken by the managements that workman was deployed with the management through different contractors including Grassroot Services, who was the employer of the workman at the time of alleged termination of his services w.e.f. 31.12.2020, stands proved from documents Exhibit 'M4' i.e. letter dated 25.07.2020 issued from authorised signatory of Grassroot Services to the workman. The contents of Exhibit 'M4' are reproduced as below :-

"This is hereby inform to you that one of our agreement for providing services to Ambuja Cement Ltd. is going to expire on 31 December 2021 and you are working via this contract at Ambuja Cement Ltd.

Further it comes to know through sources that they are not going to continue this contract for future because they have closed their office in which you are working.

So This is inform to you that your services will not be required after 31 December 2020. Your payment of wages will be paid for the above said period."

19. Workman / AW1 in his cross-examination stated that he was covered under the EPF scheme. Workman did not place on record any document to show that any deduction towards his EPF was made by the management No.1 & 2. In this regard, AW1 in his cross-examination stated that he has not placed on record any document showing any deduction towards EPF. From the aforesaid version of AW1 it is made out that workman has concealed the material record of EPF so that the details of his actual employer-contractor may not come on record. The workman has also not placed on record any document showing payment of his wages by the management No.1 & 2. The workman has not specifically pleaded whether he was drawing monthly wages in cash or through bank transaction in order to avoid the production of record of receipt of his wages. Thus, the workman has not approached the Court with clean hands. The documents Exhibit 'AW1/4' to Exhibit 'AW1/8' would prove that the workman was deployed with the management No.1 & 2 and was given the task of collection of the material from different transporters / shops and loading into the vehicle. The only fact that the management No.1 & 2 has given task in writing to the contractual worker would not prove that the managements No.1 & 2 were the direct employers of the workman. Documents Mark 'A' to Mark 'C' are not sufficiently proved into evidence as required under the Indian Evidence Act.

20. In view of the discussion made above, it is proved that management No.1 & 2 are not the direct employer of the workman. However, managements No.1 & 2 are the principal employer of the workman. The contractor Grassroot Services was the actual employer of the workman at the time of termination of services of the workman. The liability of the principal employer would arise when the contractual employer / actual employer has failed to discharge his liability towards the contractual worker. In the present case, the workman has not impleaded the necessary party i.e. contractor Grassroot Services. Thus, the present claim statement is bad for non-joinder of necessary party. Due to non-joining of Grassroot Services as one of the parties - management, it could not be ascertained whether the actual employer-Grassroot Services has defaulted in discharge of any of its statutory liabilities. Under the circumstances, no liability of management No.1 & 2 arises towards the workman.

21. Accordingly, issues No.1 & 2 are decided against the workman and in favour of the management. Issue No.3 is decided in favour of the management and against the management.

Issue No. 4 :

22. Onus to prove this issue is on the management.

23. As per the joint discussion on issues No.1 to 3, the present claim statement is bad for non-joinder of necessary party i.e. contractor Grassroot Services, therefore, the present claim statement is not maintainable.

24. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

25. In the view of foregoing findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 05.06.2024

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Vinita, W/o Jagjeet Singh, R/o # 6456/A, Sector 56, Chandigarh, do hereby declare that I was marriage with Bharat Mohan, S/o Pitamber dutt, R/o # 6456/A, Sector 56, Chandigarh, and delivered a male child namely Aditya Bhatt. My husband Bharat Mohan died on 04-10-2015. I remarried with Jagjeet Singh, S/o Balvindra Singh, vide marriage registration Number MR/Authmreg/2022/1205. Now my son's name may be know as Aditya Singh, S/o Jagjeet Singh for all purpose in future.

[1258-1]

I, Vikrant, S/o Bishamber Das, R/o House No. 4440, Maloya Colony, Chandigarh, have changed the name of my minor daughter from Himanshu to Himanshi.

[1259-1]

I, Anjali Baksh, D/o Patrick Baksh, R/o H. No. 81, Type 3, PGI Campus, Sector 12, Chandigarh, changed my name to Anjali.

[1260-1]

मैं, कुसुम संतरा, पुत्री निरंजन संतरा, निवासी # 2623, डडूमाजरा कॉलोनी, सैक्टर 38, चंडीगढ़, घोषणा करती हूँ कि मैंने अपना नाम कुसुम संतरा से बदलकर आकृति रख लिया है।

[1261-1]

I, Raj Kamal, D/o Gurinder Singh, R/o SCF 11, Sector 27-C, UT Chandigarh-160019, have changed my name to Rajkamal Gandhi.

[1262-1]

I, Pawan Kumar, S/o Sh. Baldev Raj, R/o House No. 3026, Sector 20-D, Chandigarh, have changed my name from Pawan Kumar to Pawan Sachdeva.

[1263-1]

I, Gurmeet Singh, S/o Narain Singh, R/o # 2043, Sector 37-C, Chandigarh, have changed the name of my minor son from Prabhjot Singh to Prince Singh.

[1264-1]

I, Priyana, D/o Sh. Parveet Garg, W/o Manoj Bansal, Resident of House No. 5141, 38 West, Chandigarh, declare that I have changed my name from Priyana to Priyana Garg.

[1265-1]

I, Shanti Prasad, S/o Sh. Mahaveer, R/o House No. 3381, Sector 15-D, Chandigarh, have changed my name from Shanti Prasad to Suresh Kumar.

[1266-1]

I, Ashok Chauhan, S/o Late Sh. Ram Chander, House No. 2964/1, Sector 42-C, Chandigarh-160036, have changed my name from Ashok Chauhan to Ashok Kumar Chauhan.

[1267-1]

I, Varinder Kumar, S/o Joginder Nath Thapar, R/o House No. 3247, Sector 27-D, Chandigarh, have changed my name from Varinder Kumar to Varinder Kumar Thapar.

[1268-1]

I, Shiv Kumar, S/o Satpal Kumar, # 3103, Sector 19-D, Chandigarh, have changed my minor son's name from Arnav to Ryan.

[1269-1]

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